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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD ROBINSON,

Defendant and Appellant.

2d Crim. No. B206158  
(Super. Ct. No. NA072640)  
(Los Angeles County)

Donald Robinson appeals from the judgment entered following his conviction by a jury of the first degree murder of James Royal (Pen.Code, §§ 187, subd. (a), 189)<sup>1</sup> and possession of a firearm by a felon. (§ 12021, subd. (a)(1).) The jury found true allegations that appellant had personally discharged a firearm proximately causing death (§ 12022.53, subd. (d)) and that the murder was committed for the benefit of a criminal street gang. (§ 186.22, subd. (b)(1).) The trial court found true allegations of one prior separate prison term (§ 667.5, subd. (b))<sup>2</sup> and one prior juvenile adjudication for a serious

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<sup>1</sup> All statutory references are to the Penal Code.

<sup>2</sup> The information alleged two prior separate prison terms arising from two felony cases. But the abstracts of judgment for the felonies show that the sentences in both cases were ordered to be served concurrently. This resulted in only one prior separate prison term within the meaning of section 667.5, subdivision (b). (See *People v. Jones* (1998) 63

or violent felony within the meaning of California's "Three Strikes" law. (§§ 1170.12, subds. (a)-(d); 667, subds. (b)-(i).) The court imposed an aggregate prison sentence of 85 years to life. It did not give appellant credit for presentence custody.

Appellant contends that the trial court erroneously failed to instruct the jury sua sponte (1) that it must unanimously agree on the factual basis underlying a guilty verdict on the murder charge, and (2) "that appellant had to specifically intend to aid and abet a killing in order to be guilty as an aider and abettor." Appellant also argues that, because he did not have the right to a jury trial in the proceedings that resulted in the juvenile adjudication, the court violated his constitutional rights by treating the adjudication as a strike. Finally, appellant contends that the court erroneously failed to give him credit for presentence custody. Only the final contention is meritorious. Respondent correctly points out that the court omitted to impose a \$20 court security fee on each of appellant's two convictions. We modify the judgment to provide appellant with credit for 446 days of actual presentence custody and to impose the requisite security fees. We affirm the judgment as modified.

### *Facts*

Appellant was a member of a criminal street gang: the Rolling 20's Crips. The victim, James Royal, was a member of a rival criminal street gang: the Four Corner Block Crips. The two gangs were "involved in a direct war."

On November 13, 2006, appellant and a companion approached Parris Wilson. Appellant's companion asked Wilson "where was the weed at." Wilson said that he did not know. Appellant's companion asked Wilson "where was the four corner block at." Wilson replied that "Bird [Royal's moniker] was at the liquor store." Appellant and his companion walked away. A short time later, Wilson heard gunshots.

Harold Green saw two men walking through a parking lot. One of the men called out to Royal, "Where the weed at?" Green heard five or six gunshots. He looked up and

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Cal.App.4th 744, 747 ["only one enhancement is proper where concurrent sentences have been imposed in two or more prior felony cases"].)

saw two men jogging toward an alley. Royal was lying on the ground. He had been shot six times.

A deputy sheriff found a loaded .357 magnum revolver inside appellant's residence. A criminalist opined that a bullet jacket recovered from the crime scene and two bullet fragments recovered from Royal's body had been fired from the revolver. Another projectile recovered from Royal's body had not been fired from the revolver. The criminalist, therefore, concluded that "two different firearms [had been] used at the shooting."

#### *Unanimity Instruction*

The prosecution's case was based on alternative theories that appellant either had actually perpetrated the murder or had aided and abetted its commission. Appellant contends that the trial court erroneously failed to instruct the jury sua sponte that it must unanimously agree on the factual basis underlying a guilty verdict on the murder charge. Appellant "acknowledges [that] the California Supreme Court's decision in *People v. Beardslee* (1991) 53 Cal.3d 68, is consistently cited for the proposition that there is no need for a unanimity instruction on first degree murder."

Pursuant to the doctrine of stare decisis, we are bound to follow California Supreme Court holdings that a unanimity instruction is not required in these circumstances. (*People v. Jenkins* (2000) 22 Cal.4th 900, 1024-1026.) Even if a unanimity instruction were required, its omission would have been harmless error beyond a reasonable doubt. The jury found true an allegation that appellant had "personally and intentionally discharged a firearm, a handgun, which proximately caused death to James Royal . . . ." Thus, the jury unanimously found that appellant was an actual perpetrator of the murder, not an aider and abettor.

#### *Specific Intent*

Appellant contends that the trial court erroneously failed to instruct the jury sua sponte "that appellant had to specifically intend to aid and abet a killing in order to be guilty as an aider and abettor." But the trial court instructed on specific intent: "Someone aids and abets a crime if he knows of the perpetrator's unlawful purpose and he

*specifically intends* to and does, in fact, aid, facilitate, promote, encourage or instigate the perpetrator's commission of the crime." (Italics added.) In any event, the failure to instruct on specific intent would have been harmless error beyond a reasonable doubt because, as discussed above, the jury found that appellant was an actual perpetrator of the murder.

### *Juvenile Adjudication*

Appellant argues that, because he did not have the right to a jury trial in the proceedings that resulted in the juvenile adjudication, the court violated his constitutional rights by treating the adjudication as a strike. We rejected the same argument in *People v. Pearson* (2008) 165 Cal.App.4th 740, 748. Appellant has not persuaded us that *Pearson* was wrongly decided.<sup>3</sup>

### *Credit for Presentence Custody*

Appellant contends, and respondent concedes, that he is entitled to credit for 446 days of actual presentence custody. We accept the concession. "[T]he unambiguous language in section 2900.5, subdivision (a) grants all defendants presentence credits." (*People v. Herrera* (2001) 88 Cal.App.4th 1353, 1366.)

### *Security Fee*

The trial court ordered appellant to pay one \$20 court security fee. (§ 1465.8., subd. (a)(1).) It was required to impose one \$20 fee for each of appellant's two convictions, for a total of \$40. (*People v. Walz* (2008) 160 Cal.App.4th 1364, 1372.)

### *Disposition*

The judgment is modified to provide appellant with credit for 446 days of actual presentence custody and to impose a \$20 court security fee on each of appellant's two convictions. As modified, the judgment is affirmed. The trial court is directed to prepare

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<sup>3</sup> The question of whether a juvenile adjudication can constitutionally be treated as a strike is currently before the California Supreme Court in *People v. Nguyen*, review granted October 10, 2007, S154847, and *People v. Tu*, review granted December 12, 2007, S156995.

an amended abstract of judgment incorporating this modification and to forward a certified copy to the Department of Corrections and Rehabilitation.

NOT FOR PUBLICATION

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Arthur H. Jean, Jr. , Judge  
Superior Court County of Los Angeles

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